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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	Rulemaking 06-04-009 (Filed April 13, 2006)

OPENING COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON FINAL STAFF WORKSHOP REPORT AND PROPOSAL

FRANK J. COOLEY
ANNETTE GILLIAM

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-4880
Facsimile: (626) 302-1935
E-mail: gilliaa@sce.com

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I.

INTRODUCTION

Pursuant to the Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations,[1] Southern California Edison Company (SCE) hereby submits it's Opening Comments on the Final Staff Workshop Report and Proposal for an Interim EPS (Final Staff Proposal), contained in the Final Workshop Report: Interim Emissions Performance Standard Program Framework (Final Report).[2]

Before the Commission Staff issued the Final Report, however, the California Legislature passed Senate Bill (SB) 1368 on August 31, 2006.[3] Governor Schwarzenegger signed SB 1368 on September 29, 2006. The new law on some of the issues addressed by the Final Report and, as such, the Commission must follow the new law. In response to the passage of SB 1368, the

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1 Assigned Commissioner's Ruling: Phase 1 Amended Scoping Memo and Request for Comments on Final Staff Recommendations, dated October 5, 2006, *mimeo,* pp. 3, 7.

2 Final Workshop Report: Interim Emissions Performance Standard Program Framework, R.06-04-009, June 21-23, 2006, issued by the Commission on October 2, 2006. The Final Staff Proposal appears as Section VI.C of the Final Workshop Report, pp. 43-48.

3 SB 1368 is an act to add Chapter 3 (commencing with Section 8340) to Division 4.1 of the Public Utilities Code, relating to electricity, introduced in the Senate by Senator Perata and coauthored by Assembly Member Levine.

Commission issued an Order Amending Order Instituting Rulemaking to designate this proceeding as the procedural forum for the Commission's implementation of the new law.[4]

In these Opening Comments, SCE focuses on issues addressed in the Final Report with which SCE disagrees or that need clarification based on SB 1368. Appendix A summarizes SCE's positions on the various other provisions of the Final Report.

II.

DISCUSSION

A. The EPS Should Apply Only To "New Ownership Investments" and Not Existing Ownership Investments Such As Renovations of Utility Owned Existing Generation Facilities.

The Natural Resources Defense Council, The Utility Reform Network, the Union of Concerned Scientists, and the Western Resource Advocates (NRDC/TURN/UCS/WRA) recommend that utility-retained generators (URG) that undergo major renovations be covered under the cap.[5] Staff readily accepts NRDC/TURN/UCS/WRA's proposal on such URG renovations and offers the following logic to support its conclusion:

> Major renovations of existing facilities, like other major financial commitments, involve long-term commitments that will affect power costs, environmental impacts, and ratepayer interests for many years. As the nation has learned with respect to "new source" standards under the Clean Air Act, extensive renovation does not necessarily require expansion, but it does implicate long-term emissions trends. Including such events in the definition of long-term commitments is reasonable

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[4] D. 06-10-020, dated October 5, 2006, *mimeo,* p. 1 and Ordering Paragraph 1, *mimeo,* p. 5. The Commission also amended the list of Respondents and the service list to encompass a broader group of load-serving entities (LSEs) that is consistent with the definition of the term used in SB 1368.

[5] Final Report, p. 24.

> and comports with the definition of baseload generation as defined in Section 8340(a).[6]

Staff's conclusion that, "Including such events in the definition of long-term commitments is reasonable and comports with the definition of baseload generation as defined in Section 8340(a)" is contrary to SB 1368. SB 1368 Section 2, which adds Chapter 3 (commencing with Section 8340) to Division 4.1 of the Public Utilities Code (PUC) adds PUC Section 8340(a), which defines "baseload generation":

> "Baseload generation" means electricity generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least 60 percent.

The definition of "baseload generation" is based on a determined "annualized plant capacity factor" and makes no mention of "long-term commitments" as the Staff erroneously claims in the Final Staff Report.[7] Staff is confusing the concept of baseload facilities with major renovations of existing facilities. Therefore, Staff's conclusion that, "Including major renovations in the definition of 'long-term commitments' comports with the definition of baseload generation as defined in Section 8340(a)" is false under SB 1368. Concomitantly, Staff's conclusion that, "Including major renovations in the definition of 'long-term commitments' is reasonable" is also false and inconsistent with the law.[8]

In fact, including all major renovations of existing facilities under the ambit of the GHG EPS is not reasonable. The purpose of SB 1368 to the Legislature is to encourage new long-term financial commitments to zero- and low-carbon generating resources – not to prohibit other long-term financial commitments, such as major renovations in existing facilities as Staff would do.

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6 Final Report, p. 24. Emphasis added.

7 Final Work Report, p. 24.

8 The definition of "long-term financial commitments in Section 8340(j) of SB 1368 does not mention "major renovations." *See, infra*. Staff cannot conclude that the Legislature intended to include such investments under the ambit of the new law. Staff should examine the legislative history of SB 1368 to understand the intent of the legislation. *See infra* Section II.B.

Section 1(e) of SB 1368 states that the Legislature finds and declares that:

> California's investor-owned electric utilities currently have long-term procurement plans that include proposals for making new long-term financial commitments to electrical generating resources over the next decade, which will generate electricity while producing emissions of greenhouse gases for the next 30 years or longer. New long-term financial commitments to zero- or low-carbon generating resources should be encouraged.[9]

The Commission cannot, consistent with the direction of the Legislature, extend SB 1368 beyond its intended scope. It must apply the new law as the Legislature intended when it passed the bill. The only connection that SB 1368 makes between "long-term financial commitment" and "baseload generation" is found in Section 2. Specifically, PUC Section 8341(a) provides that:

> No load-serving entity or local publicly owned electric utility may enter into a long-term financial commitment unless any baseload generation supplied under the long-term financial commitment complies with the greenhouse gases emission performance standard established by the commission, pursuant to subdivision (d), for a load-serving entity, or by the Energy Commission, pursuant to subdivision (e), for a local publicly owned electric utility. Emphasis added.

This section does not mention major renovations of existing facilities, so guidance must be obtained from other provisions of SB 1368. The critical phrase in this provision that NRDC/TURN/UCS/WRA and Staff ignore is "long-term financial commitment," which is defined by Section 2 of SB 1368. Specifically, PUC Section 8340(j) provides that:

> "Long-term financial commitment" means either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation. Emphasis added.

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[9] SB 1368, Section 1(e). Emphasis added.

A major renovation of an existing facility is neither a "new ownership investment" nor a "new or renewed contract." A major renovation, which will likely improve the emissions and operating characteristics of an existing resource, is an expenditure incurred by an existing owner whose ownership investment was typically made years before the major renovation becomes necessary. SB 1368 by its terms does not apply to existing ownership investments. Major renovations of existing facilities become necessary to maintain the asset in a reliable operating condition and for the asset owner and its customers to continue to obtain economic value from the asset.

The Legislature has not expressed the desire to include such "major renovations" in the scope of SB 1368 or it would have said so. Without such expressed intent, the Commission is not free to extend the application of SB 1368 to such major renovations

B. The Legislative History of SB 1368 Supports SCE's Position That the Legislature Did Not Intend to Apply the EPS to Renovation of Existing Facilities.

The Legislative history supports the view that SB 1368 does not apply to major renovations of existing facilities where the ownership of the facility has not changed. SB 1368 was introduced on February 21, 2006 by Senator Don Perata. In the original version of the proposed legislation, proposed PUC Section 8340(i) included the following definition of "Long-Term Financial Commitment":

> "Long-term financial commitment" means either an ownership investment in a power plant or a contract for procurement of baseload electricity with a term of three or more years. Emphasis added.

Thus, under the original version of Senator Perata's bill, long-term financial commitments included (i) all ownership investments in power plants and (ii) all contracts for procurement of baseload electricity with terms of three or more years.

SB 1368 was amended six times on the following dates before legislative approval:

1. Amended in Senate April 24, 2006,
2. Amended in Assembly June 22, 2006,
3. Amended in Assembly August 7, 2006,

4. Amended in Assembly August 21, 2006,
5. Amended in Assembly August 24, 2006,
6. Amended in Assembly August 30, 2006,

The first amendment changed the original definition of "long-term financial commitment" to the following:

> "Long-Term financial commitment" means either an ownership investment in baseload generation or a contract with a term of three or more years, which includes procurement of baseload generation. Emphasis added.

Thus, the first amendment added the "baseload generation" concept to the definition of "long-term financial commitment." To constitute a "long-term financial commitment," the ownership investment or contract of three or more years would have to be for baseload generation.

The second amendment changed the definition of "long-term financial commitment" to the following:

> "Long-Term financial commitment" means either a new ownership investment in baseload generation or a new or renewed contract with a term of five or more years, which includes procurement of baseload generation. Emphasis added.

Thus, the second amendment modified the type of ownership investment that would constitute a "long-term financial commitment." Specifically, only a "new ownership investment in baseload generation" could now qualify. Since the original bill included the phrase "ownership investment" and the word "new" was added in June 2006, the addition of the word "new" was intended by the Legislature to include only "new ownership investments" as "long-term financial commitments" and NOT "existing ownership investments." If the Legislature wanted to subject ALL ownership investments to be subject to the EPS, it would not have added the modifying adjective "new" before the term "ownership investment." Consistent with the Legislature's intent, the Commission cannot interpret SB 1368 to include major renovations of

existing facilities where the ownership is not new. SB 1368 does not intend to subject an existing plant owner's renovation or refurbishment of an existing plant to the EPS.

C. The Commission Should Define the Term "New And Renewal Contracts For Power"

The Staff proposes that the EPS be applied to all LSE commitments, including "new and renewal contracts for power."[10] The Commission should clarify that, by this terminology, Staff is referring to new and renewal contracts for various electricity products that an LSE enters into with an electricity market participant for delivery from that market participant's resources. Such clarification is warranted because other types of agreements, such as co-tenancy agreements and plant operation and maintenance agreements, continue to exist in this industry. Such agreements are not the same as contracts for the supply of power to an LSE. Such non-power-purchase-agreements are not subject to the EPS and the Commission should so clarify.

D. All Combined Cycle Gas Turbine Facilities That Meet The Requirements Of Section 8341(d)(1) Should Be Deemed In Compliance At The Onset Of The EPS Program And For The Remainder Of Their Economic Life, Without Regard To Contract Renewals

SB 1368 Section 2 adds PUC Section 8341(d)(1), which provides that

> All combined-cycle natural gas power plants that are in operation, or that have an Energy Commission final permit decision to operate as of June 30, 2007, shall be deemed to be in compliance with the greenhouse gases emission performance standard.

The intent of SB 1368 is clearly to grandfather these existing CCGTs and not subject them to the EPS. Nevertheless, Staff exceeds the purview of SB 1368 in Staff's recommendations:

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[10] Final Workshop Report, p. 44.

> Staff recommends that all new or renewal contracts and/or commitments with resources, including existing, repowered, and new facilities, be subject to the EPS. For the purposes of ensuring that existing contracts and investments are not required to be renegotiated, all facilities that meet the requirements of Section 8341(d)(1) should be deemed in compliance at the onset of the EPS program. As contract renewals and/or repowering of those facilities occur, they should be subject to the gateway standard. The decision to renew a contract or repower generation commits California's LSEs and ratepayers to those costs and emissions profiles just like a decision to enter into a new contract with a new facility.[11] Emphasis added.

Contrary to SB 1368's provision that omits any restriction of the "deemed- in-compliance" provision to the "onset of the EPS program," Staff adds this restriction and imposes an additional requirement that "As contract renewals and/or repowering of those facilities occur, they should be subject to the gateway standard."

Staff's recommendation is inconsistent with the manner in which the Legislature intended to treat these facilities. Staff's proposal would create tremendous uncertainty in the electricity markets if it were to be adopted. For example, new generation facilities are typically expected to operate for a period of more than 30 years. However, LSEs typically do not offer or sign power purchase agreements longer than 10 years. As a result, under the Staff's interpretation, the owner of the generation facility would face the risk that its facility might not satisfy the EPS when the contract or contracts that support that facility expire and the owner attempts to renew those contracts. Such a risk would be unacceptable to the financial markets. The only solution for the owner of a new facility would be to recover the entire investment in the first contract it negotiates, which would likely pass the gateway EPS. This would make that contract very expensive for the LSE and for its customers.

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[11] Final Workshop Report, p. 21. Emphasis added.

The express intent of the Legislature in passing PUC Section 8341(d)(1) is that, once the facility passes through the gateway, it is exempt from the EPS program for the remainder of the economic life of the project. If the Legislature intended otherwise, it would have so provided. The Commission must insure that the EPS is consistent with this interpretation and must reject Staff's interpretation that exceeds the express language and intent of SB 1368. It must make sure that all existing CCGTs remain exempt from the EPS for their economic life of the projects, regardless of whether their supporting contracts to purchase the power from these facilities are new or renewal contracts.

Similarly, if a power broker signs contracts with several combined cycle gas turbine facilities that exist and are grandfathered at the onset of the EPS program, in order to provide the power for unspecified resource contracts the power broker enters into with LSEs, then those unspecified contracts with LSEs should be deemed in compliance with the EPS program, too. This would be consistent with the intent of SB 1368 section 8341(d)(1).

E. The Commission Should Not Implement A Size Threshold As Proposed (Less Than 25 MW).

SCE originally supported the exemption for specified resources (built or under contract) and unspecified resources/facilities under contract of 25 MW or less. However, SB 1368 does not provide any such exemption based on a size threshold, so SCE has modified its position.

In addition, upon further reflection, SCE believes that such an exemption could provide a way for small LSEs to "game the system" in more ways than just "slicing and dicing." For example, a small LSE could enter into multiple contracts of less than 25 MW each with different suppliers, who in turn are sourcing their products from resources that would not otherwise pass the EPS, to supply the LSE's entire load at favorable market prices, thus gaming the system and creating an unfair competitive advantage for the LSE. Furthermore, if the market paradigm changes and such transactions became unfavorable to that LSE, it can possibly release its customers back to the IOU, which will have to supply that load from potentially expensive

market resources. This would be a "lose-lose" situation for the IOUs and a "win-win" situation for the small LSEs.

F. The Standard Should Not Apply To Unspecified Resource Contracts That Can Determine An Average Emissions Factor.

Staff proposes to subject unspecified resources/facilities to the EPS and to impute an emissions factor to them of the CEC's net system power average.[12] The use of the CEC's net system power average is an arbitrary method to determine whether a contract with unspecified resources should pass through the gateway.

First, the resource mix as determined by the CEC of the net system power average can vary significantly from year to year.

Second, to impute an emissions factor, one needs to make several assumptions about the rate of emissions from the various types of resources included in the net system power average. This determination could be controversial. For example, the CEC net system power average would attribute a certain percentage of unaccounted for power as originating from natural gas-fired resources. However, the CEC methodology does not provide any guidance as to whether these gas fired resources are combined cycle plants or conventional steam plans. The emissions rate would be very different for these two types of facilities.

Third, the facilities used to calculate the net system power average may not be base loaded and operate at least 60% of the time, which is the intent of SB 1368. Including such facilities to determine emissions levels of unspecified resources would not comport with the intent of SB 1368. Foreseeably, in some years this net system power average might be above the proposed EPS of 1,100 lbs CO_2/MWH, which would preclude use of those resources/facilities regardless of the actual emissions factors that those resources/facilities might actually have.

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[12] Final Workshop Report, p. 38.

The Commission should permit an LSE to enter into a contract with a supplier with unspecified resources/facilities and to provide documentation that shows the average emissions factor of that group of resources/facilities is lower than the EPS applied to unspecified resource contracts. For example, a supplier could provide power from a group of all hydroelectric power plants that are unspecified. It would be inequitable to impute a net system power average to this group of hydro plants and then preclude the LSE from obtaining power from that supplier because this arbitrarily imputed emissions rate is above the adopted EPS. The hydro plants' average system emissions factor would most certainly be less than the EPS, which would permit the LSE to use those resources.

Absent the documentation described above, the Commission should adopt as the emissions factor for unspecified resources, the default factor used by the California Climate Action Registry for calculating GHG emissions from the use of electricity. The default factor used by the Registry is the average carbon intensity factor for the WECC California region which is currently the average for Year 2000 egrid generators located in California, also including imported energy.[13]

Nevertheless, if the Commission chooses to use the Net System Power Average, it should, at the very minimum, implement a five-year rolling average to mitigate the potentially large fluctuations that will likely occur from year to year due to hydro variability and other factors.

G. The Final Report's Recommended EPS Should Be Modified.

In the Final Report, the Staff recommends:

> One standard for all covered facilities based upon typical combined cycle natural gas facilities operating in the WECC system. The standard limit is 1100 lbs CO2/MWh.[14]

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[13] California Climate Action Registry, Reporting Protocol, Version 2.1, June 2006, Table C1 Cal.
[14] Final Workshop Report, p. 45.

Considering the exemption for existing CCGTs provided by SB 1368 and the likely application of this standard to new facilities or new contracts with specified and unspecified resources, the Commission should adopt a limit of 1,200 to 1,400 lbs CO2/MWh. This limit would accomplish the objectives of the EPS, yet would not unduly preclude transactions with existing facilities that have not been grandfathered or with unspecified resources.

H. The EPS Should Not Apply To Qualifying Facilities (QFs).

The EPS requirement appears to be focused on choices a utility makes in its discretionary procurement to meet customer needs. Qualifying Facilities historically have fallen under the Public Utility Regulatory Policy Act of 1978, where utilities maintained an obligation to purchase the output from QF generators. This regulation is currently under review by the Federal Energy Regulatory Commission (FERC), and it is possible that this mandatory purchase obligation may be eliminated for some, if not all, QFs.

Some of the QF technologies, both renewable and non-renewable, will not likely meet the EPS standard. To the extent FERC decides that utilities maintain a mandatory purchase obligation for any or all of these QFs, these contracts should not fall under the EPS requirement.

I. The Final Report Should Include A Methodology To Determine The Emissions Rate For "New Ownership Investments" and "New or Renewed Contracts."

SCE foresees problems arising when an LSE has to determine the projected emissions rate for its proposed supply source to compare to the EPS standard in the screening process. If the project is a new power plant, would the emissions rate be based on manufacturers' specifications? Would the predicted emissions rate be corrected for International Standards Organization conditions? For existing facilities, would the emissions be assumed based on a forecasted operational emissions rate to be developed via a computer model? Would the emissions rate be based on one hundred percent capacity factor, sixty percent capacity factor, or another percentage?

The Commission should clarify the manner in which this critical determination will be made.

J. The EPS Should Include Offsets, Safety Valves, and Other Flexibility Devices to Protect Electricity Customers from Adverse Affects of the EPS on System Reliability and Overall Costs to such Electricity Customers

SB 1368 enacts new PUC Section 8341(d)(6), which provides that:

> In adopting and implementing the greenhouse gases emission performance standard, the commission, in consultation with the Independent System Operator shall consider the effects of the standard on system reliability and overall costs to electricity customers. Emphasis added.

In enacting SB 1368, the Legislature found that:

- Consistent with the conclusions of the Commission and the State Energy Resources Conservation and Development Commission (CEC), federal regulation of emissions of GHG is likely during this decision-making timeframe;[15]
- All electricity LSEs should internalize the significant and under-recognized cost of emissions recognized by the Commission with respect to the IOUs, and to reduce California's exposure to costs associated with future federal regulation of these emissions;[16]
- A GHG EPS for new long-term financial commitments to electrical generating resources would reduce potential financial risk to California consumers for future pollution-control costs;[17] and
- A GHG EPS would reduce potential exposure of California consumers to future reliability problems in electricity supplies.[18]

To ensure that the goals of the GHG EPS are not overshadowed by the risk of increased financial risk to California consumers for future pollution-control costs and reliability problems in their electricity supplies, a reliability "safety valve" review by the Commission is appropriate.

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[15] SB 1368, Section 1(f).
[16] SB 1368, Section 1(g).
[17] SB 1368, Section 1(i).
[18] SB 1368, Section 1(j).

The Commission should not jeopardize system reliability by implementing an interim EPS. In addition to a reliability "safety valve," the Commission should also implement an "economic safety valve." The economic safety is necessary to comport with SB 1368's requirements and to ensure that compliance costs do not escalate beyond customers' ability to pay for them. The Commission should also provide for offsets without geographic restrictions (which will reduce overall costs), that are real, durable, measurable. If the projected emissions of newly owned or contracted for resources are projected to exceed the EPS, then the LSE should have the opportunity to offset the amount of emissions that exceed the EPS to ensure the goals of the Legislature are met.

III.

CONCLUSION

SCE respectfully submits its Opening Comments on the Final Staff Report.

Respectfully submitted,

FRANK J. COOLEY
ANNETTE GILLIAM

/S/ ANNETTE GILLIAM
By: Annette Gilliam

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-4880
Facsimile: (626) 302-1935
E-mail: gilliaa@sce.com

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APPENDIX

SCE'S COMMENTS ON FINAL STAFF PROPOSAL FOR AN INTERIM EPS

1) **Design Goals for the EPS**
   a) Prevent backsliding and commitments that will make future GHG reductions more difficult
   b) Minimize costs to ratepayers and minimize the risk of long-term commitments that will raise the cost of future compliance costs
   c) Reliability:
      i) short-term: do not force shutdown of essential facilities
      ii) long-term: consider risks of relying on high emitting resources
   d) Administrative simplicity, regulatory certainty, consistency with statutory guidelines and requirements

SCE'S COMMENTS:
With the passage of SB 1368, the primary design goal should be compliance with and implementation of SB 1368. Responding to the existing identified design goals, SCE generally agrees with the concept of preventing "backsliding, which is when an LSE enters into a "new ownership investment" or contracts for a new or renewed term for power from an existing facility owned by another supplier. Continued use of existing facilities should not constitute "backsliding."

2) **Timeframe**
   a) Implement program on or before February 1, 2007 in consultation with the California Energy Commission and State Air Resources Board and compliant with Section 8341(d).
   b) Coordinate with procurement proceeding, but adopt prior to February 1, 2007 per Section 8341(d).
   c) Implement performance standard as interim measure for an unspecified period of time. CPUC, through a rulemaking proceeding and in consultation with the Energy Commission and State Air Resources Board, shall reevaluate and continue, modify, or replace the greenhouse gases EPS when an enforceable green house gases emissions limit is established and in operation, that is applicable to load serving entities. (Section 8341(g))

SCE'S COMMENTS:
SCE generally agrees, but would have preferred a sunset date or a condition upon which the EPS would terminate or that would trigger the rulemaking proceeding to "reevaluate and continue, modify, or replace" the EPS.

3) **To Which LSEs does the EPS apply?**
   a) Apply to all jurisdictional LSEs (including ESPs and CCAs). (Section 8340(h), 8341(a))

b) Create ESP process to address ESP procurement related to this program (Section 8341(a)(2)and(3)
c) Don't delay pending program development for publicly-owned utilities
d) Develop a filing/approval process for multi-jurisdictional utilities (MJUs) compliant with Section 8341(d)(9).

SCE'S COMMENTS:
SCE agrees to (a), (b), and (d). SCE agrees with the concept of (c). The Commission should request the CEC to promulgate an EPS applicable to publicly-owned utilities no later than February 1, 2007, to be consistent with requirements for Commission-jurisdictional LSEs.

4) Program Screens

a) The EPS standard will be applied on a "gateway" basis, at the time a LSE's commitment (build or buy) is proposed. (Section 8341(a))
b) The standard will be applied to the reasonably projected emission rate (lbs of CO2 per MWh) from the supply source over the term of the commitment. (Section 8341 broadly).
c) "Covered resources" are resources with a reasonably projected average annual capacity factor of 60% or greater. (Section 8340(a))

SCE'S COMMENTS:
SCE believes that the Final Report should include how to calculate the emissions rate for a new ownership investment or for a new or renewed contract (see Section II.I of the Opening Comments).

5) Covered Power Sources

a) Applied to all LSE commitments (Section 8341), including:
   i) utility owned new generation,
   ii) repowered facilities
   iii) new and renewal contracts for power, including cogeneration facilities
   iv) For the purposes of ensuring that existing contracts and investments are not required to be renegotiated, all facilities that meet the requirements of Section 8341(d)(1) should be deemed in compliance at the onset of the EPS program. As contract renewals and/or repowering of those facilities occur, they should be subject to the gateway standard.

SCE'S COMMENTS:
SCE disagrees with some of the above provisions (see Sections I.A and II.B of the Opening Comments).

b) All new and renewal contracts and commitments in "covered resources" of five years or longer (Section 8340(j))

SCE'S COMMENTS:
SCE seeks clarification of this provisions (see Section II.C of the Opening Comments).

c) Applied to baseload and intermediate or "shaping" facilities with reasonably anticipated annual average capacity factor of 60% or greater (Section 8340(a))

SCE'S COMMENTS:
SCE generally agrees with this provision, but "intermediate" or "shaping" facilities should be removed since this type of facility is not included in SB 1368.

d) Size threshold (Section 8341 broadly):
   i) For specified facilities (built or under contract): 25 MW or greater commitment (e.g. contract size) delivered to the grid;
   ii) For unspecified resource/facilities under contract: 25 MW or greater delivered to the grid under contract commitment.
   iii) For either specified or unspecified commitments: a series of related contracts with the same supplier, likely resource, or known facility, or a series of related or similar contracts with separate sources must be considered as a single commitment in size, capacity factor, and duration.[19] Multiple contracts with the same supplier, likely resource, or known facility are considered to be a single commitment, and must be reviewed as such. Such multiple contract activities must be disclosed by the utilities to the CPUC in order to eliminate "slicing and dicing" of large contracts intended to avoid or manipulate the gateway screening process. Utilities that do not disclose such activities will be considered in violation of the performance and subject to penalty and enforcement.

   We recognize that some professional judgment is required to determine when certain contractual commitments are "related" or "similar" so as to trigger review as a single commitment. However this is a common enough problem in environmental regulation and utility prior review programs, and we expect a professional rule of reasonableness to govern its application here. LSEs that are in doubt as to the application of the Rule to new long-term commitments can disclose their contracting patterns to the Commission and seek a jurisdictional determination under the Rule.

SCE'S COMMENTS:
SCE disagrees with these provisions (see Sections II.E and II.F of the Opening Comments).

e) Application to Qualifying Facilities (QFs) to be determined based upon CPUC review of legal briefs and in accordance with PURPA.

SCE'S COMMENTS:
SCE believes that the EPS should not apply to QFs (see Section II of the Opening Comments).

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[19] Similar and related commitments should be considered cumulatively with respect to size, capacity factor, and duration. For example, two contracts with a baseload facility, each for 40% of the hours of the year, must be seen as the equivalent of a single commitment with an expected capacity factor of 80%. A contract for a four-year term, linked to a contract for the following 4 years, must be seen as a single commitment for eight years.

f) Facilities used for self-generation are covered if they meet the criteria for the gateway screen. Credit against emission rates for co-generation thermal loads will be permitted using the calculation proposed by EPUC/CAC and reviewed on a case-by-case basis upon a showing of the percentage of facility's useful thermal load.

SCE'S COMMENTS:
SCE disagrees with these provisions (see Section II of the Opening Comments).

g) Renewables compliant with the RPS are covered resources subject to the gateway screen and should estimate their emissions in a manner compliant with Section 8341(d)(4). In the case of renewable contracts with firming resources, see below.

SCE'S COMMENTS:
SCE disagrees with these provisions (see Section II of the Opening Comments).

h) Reliability and cost exemptions may be permitted, and will be considered on a case-by-case basis. The Commission will consult with the Independent System Operator to consider the effects of the standard on system reliability and overall costs to electricity customers. (Section 1(g), Section 8341(d)(6).

SCE'S COMMENTS:
SCE agrees with this provision.

6) What is the Standard and How Determined?

a) Emissions standards based upon CCGT performance of a power plant that is designed and intended to provide electricity generation at an annualized plant capacity factor of at least 60 percent. (Section 8340(a)).

SCE'S COMMENTS:
SCE agrees with this provision.

i) One standard for all covered facilities based upon typical combined cycle natural gas facilities operating in the WECC system. The standard limit is 1100 lbs CO2/MWh.

SCE'S COMMENTS:
SCE disagrees with these provisions (see Section II.G of the Opening Comments).

b) Potential R&D exemption on a case-by-case basis for higher emitting facilities. One example might be an advanced coal facility that has an equal or better emission rate than the estimated IGCC average heat rate and emissions[20], and that has or will have in a reasonable period of time the capacity and existing plan to capture and store carbon

[20] In the response to Data Request Q3, parties indicated an average heat rate of 8630 btu/kWh and emissions rate of 1770 lb CO2/MWh for IGCC facilities.

dioxide as described in the GHG Performance Standard Policy Statement. In addition, carbon dioxide that is injected in geological formations, so as to prevent releases into the atmosphere, in compliance with applicable laws and regulations shall not be counted as emissions of the power plant in determining compliance with the EPS. (Section 8341(d)(5)).

SCE'S COMMENTS:
SCE agrees with this provision.

7) **Application of the standard to units and contracts** (Section 8341 broadly)
   a) Single-unit-specific contracts: contracted unit must qualify

SCE'S COMMENTS:
SCE agrees with this provision.

   b) Multi-unit contracts: each covered unit must qualify

SCE'S COMMENTS:
SCE agrees with this provision.

   c) Baseload renewable product with a firming fossil unit(s) that qualifies as a "covered resource": baseload blended average of all covered facilities (renewable and fossil) must pass screen. If firming unit is unspecified impute appropriate emissions factor.

SCE'S COMMENTS:
SCE agrees with this provision.

   d) Null renewable power treated same as unspecified power. RPS compliant power treated as renewable.

SCE'S COMMENTS:
SCE agrees with this provision.

   e) Unspecified resource contracts: apply most current CEC "Net System Power" average at time of new or renewed commitment. This is the statewide system average of the leftover energy in the system that is not claimed- includes in and out of state power, and anything that is not claimed by a CA utility, and is the most representative option reflecting CA LSE procurement activities. All LSEs would use the same average emissions factor, regardless of location in the state.

SCE'S COMMENTS:
SCE disagrees with these provisions (see Section II of the Opening Comments).

   f) For either specified or unspecified commitments: as discussed above in 5)d.iii., a series of related contracts with the same supplier, likely resource, or known facility, or a series of related or similar contracts with separate sources must be considered as a single

commitment in size, capacity factor, and duration. Multiple contracts with the same supplier, likely resource, or known facility are considered to be one bulk contract, and must be reviewed as such. Such multiple contract activities must be disclosed by the utilities to the CPUC in order to eliminate "slicing and dicing" of large contracts intended to avoid or manipulate the gateway screening process. Utilities that do not disclose such activities will be considered in violation of the performance and subject to penalty and enforcement.

SCE'S COMMENTS:
SCE agrees with this provision.

8) **Monitoring and Enforcement** (Section 8341 broadly)
   a) CPUC gateway review with documentation and approval required prior to finalizing contract or commitment to construct

SCE'S COMMENTS:
SCE agrees with this provision.

9) **Offsets, Safety Valves, and other flexibility devices**
   a) No offsets or market price safety valves

SCE'S COMMENTS:
SCE disagrees with this provision (see Section II.J. of the Opening Comments).

   b) Case-by-case exemption for reliability and costs considered upon application and CPUC review.

SCE'S COMMENTS:
SCE agrees with this provision.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commissioner's Rules of Practice and Procedure, I have this day served a true copy of OPENING COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON FINAL STAFF WORKSHOP REPORT AND PROPOSAL on all parties identified in the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **18th day of October, 2006**, at Rosemead, California.

/S/ RAQUEL IPPOLITI
Raquel Ippoliti
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Ave.
Post Office Box 800
Rosemead, California 91770

CASE ADMINISTRATION
CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM. 370
ROSEMEAD, CA 91770
R.06-04-009

MICHAEL ALCANTAR
ATTORNEY AT LAW
ALCANTAR & KAHL LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94114
R.06-04-009

MAHLON ALDRIDGE
ECOLOGY ACTION, INC.
PO BOX 1188
SANTA CRUZ, CA 95060
R.06-04-009

JASMIN ANSAR
PG&E
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-04-009

E. JESUS ARREDONDO
DIRECTOR, REGULATORY AND GOVERNMENTAL
NRG ENERGY, INC.
4600 CARLSBAD BLVD.
CARLSBAD, CA 99208
R.06-04-009

LARRY BARRETT
BARRETT CONSULTING SERVICES
AOL
PO BOX 60429
COLORADO SPRINGS, CO 80960
R.06-04-009

CURT BARRY
717 K STREET, SUITE 503
SACRAMENTO, CA 95814
R.06-04-009

R. THOMAS BEACH
CROSSBORDER ENERGY
2560 NINTH STREET, SUITE 213A
BERKELEY, CA 94710
R.06-04-009

C. SUSIE BERLIN
ATTORNEY AT LAW
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA 95113
R.06-04-009

CLARK BERNIER
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA, CA 95476
R.06-04-009

B.B. BLEVINS
EXECUTIVE DIRECTOR
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS-39
SACRAMENTO, CA 95814
R.06-04-009

GREG BLUE
140 MOUNTAIN PKWY.
CLAYTON, CA 94517
R.06-04-009

KEVIN BOUDREAUX
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000
HOUSTON, TX 77002
R.06-04-009

KAREN BOWEN
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94111
R.06-04-009

DAVID BRANCHCOMB
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE, CA 95662
R.06-04-009

GLORIA BRITTON
ANZA ELECTRIC COOPERATIVE, INC.
PO BOX 391909
ANZA, CA 92539
R.06-04-009

DONALD BROOKHYSER
ATTORNEY AT LAW
ALCANTAR & KAHL
120 MONTGOMERY STREET
Cogeneration Association of California
SAN FRANCISCO, CA 94104
R.06-04-009

ANDREW B. BROWN
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-04-009

VERONIQUE BUGNION
POINT CARBON
205 SEVERN RIVER RD
SEVERNA PARK, MD 21146
R.06-04-009

DALLAS BURTRAW
1616 P STREET, NW
WASHINGTON, DC 20036
R.06-04-009

OLOF BYSTROM
DIRECTOR, WESTERN ENERGY
CAMBRIDGE ENERGY RESEARCH ASSOCIATES
555 CALIFORNIA STREET, 3RD FLOOR
SAN FRANCISCO, CA 94104
R.06-04-009

IAN CARTER
INTERNATIONAL EMISSIONS TRADING ASSN.
350 SPARKS STREET, STE. 809
OTTAWA, ON K1R 7S8
CANADA
R.06-04-009

SHERYL CARTER
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104
R.06-04-009

Theresa Cho
ATTORNEY AT LAW
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
R.06-04-009

JENNIFER CHAMBERLIN
STRATEGIC ENERGY
2633 WELLINGTON CT.
CLYDE, CA 94520
R.06-04-009

AUDREY CHANG
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104
R.06-04-009

DAREN CHAN
PO BOX 770000, MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.06-04-009

BILL CHEN
CONSTELLATION NEWENERGY, INC.
2175 N. CALIFORNIA BLVD., SUITE 300
WALNUT CREEK, CA 94596
R.06-04-009

CLIFF CHEN
UNION OF CONCERNED SCIENTIST
2397 SHATTUCK AVENUE, STE 203
BERKELEY, CA 94704
R.06-04-009

BRIAN K. CHERRY
REGULATORY RELATIONS
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 B10C
SAN FRANCISCO, CA 94177--0001
R.06-04-009

ALAN COMNES
WEST COAST POWER
3934 SE ASH STREET
PORTLAND, OR 97214
R.06-04-009

LISA A. COTTLE
ATTORNEY AT LAW
WINSTON & STRAWN, LLP
101 CALIFORNIA STREET, SUITE 3900
SAN FRANCISCO, CA 94111-5894
R.06-04-009

RICHARD COWART
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER, VT 5602
R.06-04-009

BRIAN T. CRAGG
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-04-009

SEBASTIEN CSAPO
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-04-009

THOMAS DARTON
PILOT POWER GROUP, INC.
9320 CHESAPEAKE DRIVE, SUITE 112
SAN DIEGO, CA 92123
R.06-04-009

KYLE L. DAVIS
PACIFICORP
825 NE MULTNOMAH,
PORTLAND, OR 97232
R.06-04-009

Matthew Deal
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-04-009

LISA DECARLO
STAFF COUNSEL
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-14
SACRAMENTO, CA 95814
R.06-04-009

LISA DECKER
COUNSEL
CONSTELLATION ENERGY GROUP INC
111 MARKET PLACE, SUITE 500
BALTIMORE, MD 21202
R.06-04-009

PAUL DELANEY
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA, CA 91737
R.06-04-009

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367-8102
R.06-04-009

PIERRE H. DUVAIR
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-41
SACRAMENTO, CA 95814
R.06-04-009

HARVEY EDER
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA, CA 90401
R.06-04-009

SHAUN ELLIS
2183 UNION STREET
SAN FRANCISCO, CA 94123
R.06-04-009

SAEED FARROKHPAY
FEDERAL ENERGY REGULATORY
COMMISSION
110 BLUE RAVINE RD., SUITE 107
FOLSOM, CA 95630
R.06-04-009

DIANE I. FELLMAN
ATTORNEY AT LAW
FPL ENERGY, LLC
234 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
R.06-04-009

Julie A Fitch
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
EXECUTIVE DIVISION ROOM 5203
SAN FRANCISCO, CA 94102-3214
R.06-04-009

MICHEL PETER FLORIO
SENIOR ATTORNEY
THE UTILITY REFORM NETWORK (TURN)
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.06-04-009

JONATHAN FORRESTER
PACIFIC GAS AND ELECTRIC COMPANY
245 MARKET STYREET, ROOM 1373A
SAN FRANCISCO, CA 94105
R.06-04-009

KEVIN FOX
STOEL RIVES LLP
900 SW FIFTH AVENUE, SUITE 2600
PORTLAND, OR 97204
R.06-04-009

MATTHEW FREEDMAN
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.06-04-009

NORMAN J. FURUTA
ATTORNEY AT LAW
DEPARTMENT OF THE NAVY
333 MARKET ST. 10TH FLOOR
SAN FRANCISCO, CA 94105-2195
R.06-04-009

JOHN GALLOWAY
UNION OF CONCERNED SCIENTISTS
2397 SHATTUCK AVENUE, SUITE 203
BERKELEY, CA 94704
R.06-04-009

JEDEDIAH J. GIBSON
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS LLP
2015 H STREET
SACRAMENTO, CA 95814
R.06-04-009

ANNETTE GILLIAM
SCE LAW DEPARTMENT
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.06-04-009

HOWARD V. GOLUB
NIXON PEABODY LLP
TWO EMBARCADERO CENTER, STE. 2700
SAN FRANCISCO, CA 94111-3996
R.06-04-009

HAYLEY GOODSON
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.06-04-009

MEG GOTTSTEIN
ADMINISTRATIVE LAW JUDGE
CALIF PUBLIC UTILITIES COMMISSION
PO BOX 210/21496 NATIONAL STREET
VOLCANO, CA 95689
R.06-04-009

JEFFREY P. GRAY
ATTORNEY AT LAW
DAVIS WRIGHT TREMAINE
505 MONTGOMERY STREET
SAN FRANCISCO, CA 94111-6533
R.06-04-009

KAREN GRIFFIN
EXECUTIVE OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 39
SACRAMENTO, CA 95814
R.06-04-009

ANN G. GRIMALDI
MCKENNA LONG & ALDRIDGE LLP
101 CALIFORNIA STREET, 41ST FLOOR
Center for Energy and Economic Development
SAN FRANCISCO, CA 94111
R.06-04-009

YVONNE GROSS
REGULATORY POLICY MANAGER
SEMPRA ENERGY
101 ASH STREET, HQ08C
SAN DIEGO, CA 92101
R.06-04-009

ERIC GUIDRY
WESTERN RESOURCE ADVOCATES
2260 BASELINE ROAD, SUITE 200
BOULDER, CO 80304
R.06-04-009

GEORGE HANSON
ASSISTANT GENERAL MANAGER
CITY OF CORONA
730 CORPORATION YARD WAY
CORONA, CA 92880
R.06-04-009

ARNO HARRIS
PO BOX 6903
SAN RAFAEL, CA 94903
R.06-04-009

AUDRA HARTMANN
LS POWER DEVELOPMENT
980 NINTH STREET, SUITE 1420
SACRAMENTO, CA 95814
R.06-04-009

KERRY HATTEVIK
MIRANT CORPORATION
696 WEST 10TH STREET
PITTSBURG, CA 94565
R.06-04-009

MARCEL HAWIGER
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO, CA 94102
R.06-04-009

TIM HEMIG
DIRECTOR
REGIONAL ENVIRONMENTAL BUSINESS
NRG ENER
4600 CARLSBAD BLVD.
CARLSBAD, CA 92008
R.06-04-009

CHRISTOPHER HILEN
ATTORNEY AT LAW
DAVIS, WRIGHT TREMAINE, LLP
ONE EMBARCADERO CENTER, SUITE 600
SAN FRANCISCO, CA 94111
R.06-04-009

DENISE HILL
DIRECTOR
4004 KRUSE WAY PLACE, SUITE 150
LAKE OSWEGO, OR 97035
R.06-04-009

NATALIE L HOCKEN
SENIOR COUNSEL
PACIFICORP
825 NE MULTNOMAH SUITE 1800
PORTLAND, OR 97232
R.06-04-009

ANDREW HOERNER
REDEFINING PROGRESS
1904 FRANKLIN STREET, 6TH FLOOR
OAKLAND, CA 94612
R.06-04-009

TAMLYN HUNT
COMMUNITY ENVIRONMENTAL COUNCIL
26 W. ANAPAMU ST., 2/F
SANTA BARBARA, CA 93101
R.06-04-009

JUDITH IKLE
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE RM 4012
SAN FRANCISCO, CA 94102
R.06-04-009

AKBAR JAZAYERI
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
R.06-04-009

JOHN JENSEN
PRESIDENT
MOUNTAIN UTILITIES
PO BOX. 205
PO BOX. 205
KIRKWOOD, CA 95646
R.06-04-009

CAROL JOLLY
PO BOX 585
CHESTERFIELD, MA 1012
R.06-04-009

BRIAN M. JONES
M.J. BRADLEY & ASSOCIATES, INC.
47 JUNCTION SQUARE DRIVE
CONCORD, MA 1742
R.06-04-009

MARC D. JOSEPH
ATTORNEY AT LAW
ADAMS BROADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO, CA 94080
R.06-04-009

EVELYN KAHL
ATTORNEY AT LAW
ALCANTAR & KAHL LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.06-04-009

JOSEPH KARP
ATTORNEY AT LAW
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO, CA 94104-1513
R.06-04-009

CURTIS KEBLER
GOLDMAN, SACHS & CO.
2121 AVENUE OF THE STARS
LOS ANGELES, CA 90067
R.06-04-009

CAROLYN KEHREIN
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON, CA 95620-4208
R.06-04-009

STEVEN KELLY
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO, CA 95814-3947
R.06-04-009

GREGORY S.G. KLATT
DOUGLASS & LIDDELL
Alliance for Retail Energy Markets
21700 OXNARD STREET, SUITE 1030
WOODLAND, CA 91367-8102
R.06-04-009

GREGORY KOISER
CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES, CA 90071
R.06-04-009

AVIS KOWALEWSKI
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON, CA 94588
R.06-04-009

LARS KVALE
CENTER FOR RESOURCE SOLUTIONS
PO BOX 39512
SAN FRANCISCO, CA 94129
R.06-04-009

Jonathan Lakritz
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5202
SAN FRANCISCO, CA 94102-3214
R.06-04-009

STEPHANIE LA SHAWN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B8R
SAN FRANCISCO, CA 94105
R.06-04-009

SHAY LABRAY
MANAGER, REGULATORY
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232
R.06-04-009

JOHN LAUN
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO, CA 92106
R.06-04-009

Diana L. Lee
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4300
SAN FRANCISCO, CA 94102-3214
R.06-04-009

JOHN W. LESLIE
ATTORNEY AT LAW
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130
R.06-04-009

DONALD C. LIDDELL
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103
R.06-04-009

KAREN LINDH
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB119
CMTA
ANTELOPE, CA 95843
R.06-04-009

GRACE LIVINGSTON-NUNLEY
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO, CA 94177
R.06-04-009

James Loewen
CALIF PUBLIC UTILITIES COMMISSION
320 WEST 4TH STREET SUITE 500
LOS ANGELES, CA 90013
R.06-04-009

BILL LOCKYER
STATE ATTORNEY GENERAL
STATE OF CALIFORNIA, DEPT OF JUSTICE
PO BOX 944255
SACRAMENTO, CA 94244-2550
R.06-04-009

LAD LORENZ
V.P. REGULATORY AFFAIRS
SOUTHERN CALIFORNIA GAS COMPANY
601 VAN NEW AVENUE, SUITE 2060
SAN FRANCISCO, CA 94102
R.06-04-009

BARRY LOVELL
BERRY PETROLEUM COMPANY
PO BOX 925
PO BOX 925
TAFT, CA 93268
R.06-04-009

ED LUCHA
PROJECT COORDINATOR
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE: B9A
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-04-009

FRANK LUCHETTI
NEVADA DIV. OF ENVIRONMENTAL PROTECTION
901 S. STEWART ST., SUITE 4001
CARSON CITY, NV 89701
R.06-04-009

LYNELLE LUND
GENERAL COUNSEL
COMMERCE ENERGY, INC.
600 ANTON BLVD., STE 2000
COSTA MESA, CA 92626
R.06-04-009

MARY LYNCH
REGULATORY AND LEGISTLATIVE AFFAIRS
CONSTELLATION ENERGY COMMODITIES GROUP
2377 GOLD MEADOW WAY, STE. 100
GOLD RIVER, CA 95670
R.06-04-009

BILL LYONS
CORAL POWER, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO, CA 92121
R.06-04-009

JACLYN MARKS
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVE.
DIVISION OF STRATEGIC PLANNING
SAN FRANCISCO, CA 94102
R.06-04-009

ROBERT W. MARSHALL
GENERAL MANAGER
PLUMAS-SIERRA RURAL ELECTRIC CO-OP
PO BOX 2000
PO BOX 2000
PORTOLA, CA 96122-2000
R.06-04-009

MARTIN MATTES
NOSSAMAN GUTHNER KNOW & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO, CA 94111
R.06-04-009

CHRISTOPHER J. MAYER
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354
R.06-04-009

MICHAEL MAZUR
3 PHASES ELECTRICAL CONSULTING
2100 SEPULVEDA BLVD., SUITE 37
MANHATTAN BEACH, CA 90266
R.06-04-009

RICHARD MCCANN
M.CUBED
2655 PORTAGE BAY ROAD, SUITE 3
DAVIS, CA 95616
R.06-04-009

BARRY F MCCARTHY
ATTORNEY AT LAW
MCCARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE, CA 95113
R.06-04-009

MIKE MCCORMICK
CALIFORNIA CLIMATE ACTION REGISTRY
515 S FLOWER ST. 1305
LOS ANGELES, CA 90071
R.06-04-009

KEITH R. MCCREA
ATTORNEY AT LAW
SUTHERLAND, ASBILL & BRENNAN
1275 PENNSYLVANIA AVENUE, NW
California Manufacturers & Technology Association
WASHINGTON, DC 20004-2415
R.06-04-009

KAREN MCDONALD
POWEREX CORPORATION
666 BURRAND STREET
VANCOUVER, BC V6C 2X8
CANADA
R.06-04-009

JEN MCGRAW
CENTER FOR NEIGHBORHOOD TECHNOLOGY
PO BOX 14322
SAN FRANCISCO, CA 94114
R.06-04-009

BRUCE MCLAUGHLIN
BRAUN & BLAISING P.C.
8066 GARRYANNA DRIVE
CITRUS HEIGHTS, CA 95610
R.06-04-009

BRIAN MCQUOWN
RELIANT ENERGY
7251 AMIGO ST., SUITE 120
LAS VEGAS, NV 89119
R.06-04-009

KAREN NORENE MILLS
ATTORNEY AT LAW
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA 95833
R.06-04-009

CYNTHIA K. MITCHELL
ECONOMIC CONSULTING INC.
530 COLGATE COURT
RENO, NV 89503
R.06-04-009

Lainie Motamedi
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5119
SAN FRANCISCO, CA 94102-3214
R.06-04-009

RONALD MOORE
SOCAL WATER/BEAR VALLEY ELECTRIC
630 EAST FOOTHILL BLVD.
SAN DIMAS, CA 91773
R.06-04-009

GREGG MORRIS
GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY, CA 94704
R.06-04-009

STEVEN MOSS
FRANCISCO COMMUNITY POWER COOPERATIVE
2325 3RD STREET, STE 344
SAN FRANCISCO, CA 94120
R.06-04-009

PHILLIP J. MULLER
SCD ENERGY SOLUTIONS
436 NOVA ALBION WAY
SAN RAFAEL, CA 94903
R.06-04-009

CLYDE S. MURLEY
INDEPENDENT CONSULTANT
600 SAN CARLOS AVENUE
ALBANY, CA 94706
R.06-04-009

SARA STECK MYERS
ATTORNEY AT LAW
LAW OFFICES OF SARA STECK MYERS
122 - 28TH AVENUE
SAN FRANCISCO, CA 94121
R.06-04-009

RICK NOGER
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON, DE 19808
R.06-04-009

KELLY NORWOOD
RATES AND REGULATION DEPARTMENT
AVISTA UTILITIES
PO BOX 3727, MSC-29
SPOKANE, WA 99220-3727
R.06-04-009

TIMOTHY R. ODIL
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
Center for Energy and Economic Development
DENVER, CO 80202
R.06-04-009

CARL PECHMAN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA 95060
R.06-04-009

ROGER PELOTE
WILLIAMS POWER COMPANY, INC.
12736 CALIFA STREET
VALLEY VILLAGE, CA 91607
R.06-04-009

JANIS C. PEPPER
CLEAN POWER MARKETS, INC.
418 BENVENUE AVENUE
LOS ALTOS, CA 94024
R.06-04-009

CARLA PETERMAN
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102
R.06-04-009

EDWARD G. POOLE
ATTORNEY AT LAW
ANDERSON & POOLE
601 CALIFORNIA STREET, SUITE 1300
SAN FRANCISCO, CA 94108-2818
R.06-04-009

KELLY POTTER
APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85260
R.06-04-009

BRIAN POTTS
ONE SOUTH PINCKNEY STREET
MADISON, WI 53703
R.06-04-009

RASHA PRINCE
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, ML 14D6
LOS ANGELES, CA 90013
R.06-04-009

BALWANT S. PUREWAL
DEPARTMENT OF WATER RESOURCES
3310 EL CAMINO AVE., LL-90
SACRAMENTO, CA 95821
R.06-04-009

ADRIAN PYE
ENERGY AMERICA, LLC
263 TRESSER BLVD.
STAMFORD, CT 6901
R.06-04-009

Kristin Ralff Douglas
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5119
SAN FRANCISCO, CA 94102-3214
R.06-04-009

STEVE RAHON
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO, CA 92123-1548
R.06-04-009

TIFFANY RAU
POLICY AND COMMUNICATIONS MANAGER
CARSON HYDROGEN POWER PROJECT LLC
ONE WORLD TRADE CENTER, SUITE 1600
LONG BEACH, CA 90831-1600
R.06-04-009

JANILL RICHARDS
DEPUTY ATTORNEY GENERAL
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND, CA 94702
R.06-04-009

Grant Rosenblum
STAFF COUNSEL
ELECTRICITY OVERSIGHT BOARD
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.06-04-009

THEODORE ROBERTS
SEMPRA ENERGY
101 ASH STREET, HQ 13D
SAN DIEGO, CA 92101-3017
R.06-04-009

JAMES ROSS
REGULATORY & COGENERATION SERVICES, INC.
500 CHESTERFIELD CENTER, SUITE 320
CHESTERFIELD, MO 63017
R.06-04-009

Nancy Ryan
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5217
SAN FRANCISCO, CA 94102-3214
R.06-04-009

SAM SADLER
OREGON DEPARTMENT OF ENERGY
625 NE MARION STREET
SALEM, OR 97301-3737
R.06-04-009

SOUMYA SASTRY
PO BOX 770000
SAN FRANCISCO, CA 94177
R.06-04-009

Don Schultz
CALIF PUBLIC UTILITIES COMMISSION
770 L STREET, SUITE 1050
RM. SCTO
SACRAMENTO, CA 95814
R.06-04-009

JANINE L. SCANCARELLI
FOLGER LEVIN & KAHN LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO, CA 94111
R.06-04-009

MICHAEL SCHEIBLE
DEPUTY EXECUTIVE OFFICER
CALIFORNIA AIR RESOURCES BOARD
1001 I STREET
SACRAMENTO, CA 95677
R.06-04-009

STEVEN S. SCHLEIMER
DIR. OF MARKET & REGULATORY AFFAIRS
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PO BOX 11749
PLEASANTON, CA 94588-1749
R.06-04-009

REED V. SCHMIDT
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
California City-County Street Light Assoc.
BERKELEY, CA 94703-2714
R.06-04-009

LISA SCHWARTZ
SENIOR ANALYST
ORGEON PUBLIC UTILITY COMMISSION
PO BOX 2148
SALEM, OR 97308-2148
R.06-04-009

PAUL M. SEBY
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER, CO 80202
R.06-04-009

DAN SILVERIA
SURPRISE VALLEY ELECTRIC COOPERATIVE
PO BOX 691
ALTURAS, CA 96101
R.06-04-009

KEVIN J SIMONSEN
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO, CO 81301
R.06-04-009

Donald R Smith
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4209
SAN FRANCISCO, CA 94102-3214
R.06-04-009

AIMEE M. SMITH
ATTORNEY AT LAW
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO, CA 92101
R.06-04-009

GLORIA D. SMITH
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO, CA 94080
R.06-04-009

RICHARD SMITH
MODESTO IRRIGATION DISTRICT
PO BOX 4060
MODESTO, CA 95352-4060
R.06-04-009

DARRELL SOYARS
MANAGER-RESOURCE
PERMITTING&STRATEGIC
6100 NEIL ROAD
RENO, NV 89520-0024
R.06-04-009

JAMES D. SQUERI
ATTORNEY AT LAW
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-04-009

SEEMA SRINIVASAN
ALCANTAR & KAHL
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO, CA 94104
R.06-04-009

F. Jackson Stoddard
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5040
SAN FRANCISCO, CA 94102-3214
R.06-04-009

ANNIE STANGE
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND, OR 97210
R.06-04-009

MERIDETH TIRPAK STERKEL
CALIFORNIA PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
AREA 4-A
SAN FRANCISCO, CA 94102-3214
R.06-04-009

DON STONBERGER
APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX, AZ 85004
R.06-04-009

NINA SUETAKE
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO, CA 94102
R.06-04-009

ADRIAN E. SULLIVAN
SEMPRA ENERGY
101 ASH STREET, HQ13D
SAN DIEGO, CA 92101
R.06-04-009

KENNY SWAIN
POWER ECONOMICS
901 CENTER STREET
SANTA CRUZ, CA 95060
R.06-04-009

Christine S Tam
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 4209
SAN FRANCISCO, CA 94102-3214
R.06-04-009

Charlotte TerKeurst
CALIF PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
ROOM 5021
SAN FRANCISCO, CA 94102-3214
R.06-04-009

KAREN TERRANOVA
ALCANTAR & KAHL
120 MONTGOMERY STREET SUITE 2200
SAN FRANCISCO, CA 94104
R.06-04-009

EDWARD J TIEDEMANN
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO, CA 95814-4416
R.06-04-009

SCOTT TOMASHEFSKY
REGULATORY AFFAIRS MANAGER
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
NORTHERN CALIFORNIA POWER AGENCY
ROSEVILLE, CA 95678
R.06-04-009

MARK C TREXLER
TREXLER CLIMATE+ENERGY SERVICES, INC.
529 SE GRAND AVE,M SUITE 300
PORTLAND, OR 97214-2232-2232
R.06-04-009

ANDREW J. VAN HORN
VAN HORN CONSULTING
12 LIND COURT
ORINDA, CA 94563
R.06-04-009

ROGER VANHOY
ASSISTANT GENERAL MANAGER
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CALIFORNIA 95352
R.06-04-009

EDWARD VINE
LAWRENCE BERKELEY NATIIONAL LAB
BUILDING 90-4000
BERKELEY, CA 94720
R.06-04-009

SYMONE VONGDEUANE
SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO, CA 92101-3017
R.06-04-009

DEVRA WANG
STAFF SCIENTIST
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO, CA 94104
R.06-04-009

ERIC WANLESS
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCSO, CA 95104
R.06-04-009

CHRISTOPHER J. WARNER
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO, CA 94120
R.06-04-009

JOY WARREN
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO, CA 95354
R.06-04-009

LISA WEINZIMER
CALIFORNIA ENERGY REPORTER
PLATTS
695 NINTH AVENUE, NO. 2
SAN FRANCISCO, CA 94118
R.06-04-009

ANDREA WELLER
DIRECTOR
STRATEGIC ENERGY LLC
3130 D BALFOUR ROAD, SUITE 290
BRENTWOOD, CA 94513
R.06-04-009

GREGGORY L. WHEATLAND
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS
2015 H STREET
SACRAMENTO, CA 95814
R.06-04-009

JOSEPH F. WIEDMAN
GOODIN MACBRIDE SQUERI RITCHIE & DAY,LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94111
R.06-04-009

VALERIE J. WINN
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B9A
SAN FRANCISCO, CA 94105
R.06-04-009

RYAN WISER
BERKELEY LAB
ONE CYCLOTRON ROAD
BERKELEY, CA 94720
R.06-04-009

ELLEN WOLFE
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY, CA 95746
R.06-04-009

CATHY S. WOOLLUMS
MIDAMERICAN ENERGY HOLDINGS COMPANY
106 EAST SECOND STREET
DAVENPORT, IA 52801
R.06-04-009

E. J. WRIGHT
OCCIDENTIAL ENERGY MARKETING, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON, TX 77046
R.06-04-009

LEGAL & REGULATORY DEPARTMENT
CALIFORNIA ISO
151 BLUE RAVINE ROAD
FOLSOM, CA 95630
R.06-04-009

MRW & ASSOCIATES, INC.
1999 HARRISON STREET, STE 1440
OAKLAND, CA 94612-3517
R.06-04-009

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVE.
SAN FRANCISCO, CA 94110-1431
R.06-04-009